

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Application of.  
Dennis and Sharon Elke for Family Day  
Care Licensure  
RECOMMENDATIONS

FINDINGS OF FACT,  
CONCLUSIONS AND

The above-entitled matter came on for hearing Before Administrative Law Judge Richard C. Luis on June 25 and July 3, 1985 in the Office of the Hennepin County Attorney, 2000 Government Center, Minneapolis, Minnesota. John St. Marie, Esq., Assistant Hennepin County Attorney, A-2000 Government Center, Minneapolis, Minnesota 55487, appeared on behalf of the Hennepin County Community Services Department (hereinafter "Agency" or "County"). Melvin J. Peterson, Jr., Esq., 506 Community Services Building, Champlin, Minnesota 55316, appeared on behalf of the Applicants, Dennis and Sharon Elke (also "Respondents"). The record in this matter closed on July 22, 1985, with receipt of the County's brief.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Leonard W. Levine, Commissioner of Human Services, 4th Floor Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155.

STATEMENT OF ISSUES

Whether the Elkes' application should be denied for any or all of the following reasons:

- (a) they are not able and willing to work cooperatively with the Agency under Minn. Rule (1983) 9545.0350;
- (b) Mrs. Elke is not emotionally able to provide day care to young children under Minn. Rule (1983) 9545.0360;
- (c) Mrs. Elke committed an act of child battering or child abuse under Minn. Rule (1983) 9545.0340A.;
- (d) the Elkes, do not possess consistent and healthy methods for handling the lifestyle unique to their own family under Minn. Rule (1983) 9545.0340.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On March 7, 1983, Dennis and Sharon Elke applied for family day care (FDC) licensure through the Hennepin County Community Human Services Department. The social worker assigned to the application as Lil Stimmler.

2. On October 13, 1983, Ms. Stimmler issued a recommended denial of licensure. The Licensing Division of the State Department of Human Services never received this recommendation, and therefore issued no determination denying licensure, with right of appeal.

In January of 1985, the Elkes, through their counsel, initiated inquiries regarding the status of their license application. It was then determined that the Department of Human Services had never acted upon Ms. Stimmler's recommendation. In order to carry out the appeal process, Stimmler's October, 1983 recommendation was re-issued on January 23, 1985, and the State Department's Licensing Division affirmed Stimmler on January 30, 1985. From that affirmati on, the Elke's filed a timely appeal, and this hearing process followed.

3. The Elkes have four children -- Dennis Jr., now 23 years old, Denise, 21, Sherri, 16, and Sheryl, 14. The younger daughters, Sherri and Sheryl, are good students, good athletes and accomplished (prize-winning) dancers. They have never caused disciplinary problems for their parents, and both Elke parents are very supportive of the girls' numerous extra-curricular activities. As discussed below, the raising of Dennis Jr. and Denise was more difficult.

4. By the time Denise Elke was 15 years old, she had run away from home seven times. She was actively rebellious at home ant chronically truant (70% of the time) at Osseo Junior High School, where she had a poor academic record. She was heavily involved in marijuana and alcohol when, in June of 1979, her mother sought help from the Community Human Services Department. Child Welfare Worker Evelyn Rogan was assigned to the case.

5. From July 17 through July 27, 1979, Denise Elke was placed by her mother in Welcome Home, a Community Service's treatment facility in Brooklyn Center. Denise did not get along at Welcome Home, and was removed from that program by her mother. Mrs. Elke reported to Rogan that "Everything was going

fine and that Denise and her father were doing alright" , and Rogan Closed her file on October 23, 1979.

In her report to Rogan, Arlene Dockman, Program Director at the Welcome Home, stated:

"I have no doubt that Denise will again require placement in the near future. Mr. Elke seems to be in need of treatment for alcoholism, but Mrs. Elke refuses to take any action. If Denise is referred again for placement, it would be advisable to have court involvement, so that Mrs, Elke cannot hold her out of treatment again prematurely."

6. In February and March of 1980, both parents and Denise utilized the counseling services of Social Worker John Braun. Although some of this counseling dealt with problems outside of those focusing on Denise, as discussed below, the Elkes were still greatly concerned with Denise's rebellious behavior at that time. The girl had run away from home again, and Braun advised the family, in March of 1980, not to pressure her into returning home because the situation between Denise and her father was "too explosive".

7. Denise Elke has since stabilized her lifestyle, has regular employment, lives at home and is engaged to be married. The record does not detail the changes in Denise's behavior or lifestyle between March 1980 and the present.

8. In the fall of 1979, Dennis Elke Jr. was 17 years old and had a I ready enlisted to join the United States Air Force on January 8, 1980. The record reveals little about Dennis Jr. except for one incident, which occurred on the Friday after Thanksgiving 1979. On that night, Dennis Jr. and Denise had gone to a party hosted by a boyfriend of Denise's. Sometime during mid-evening, a guest at the party called the Elkes and reported that Dennis Jr. was drunk, obnoxious and had become destructive. The parents drove to the party location (also in Maple Grove), but arrived too late to prevent Dennis Jr. from driving away at a high speed in another car. Dennis Elke Sr., with his wife at his side, chased his son at high speed throughout Maple Grove, Osseo and Brooklyn Park for an undetermined time and distance, before giving up due to several near-accidents.

9. Sometime after the Elkes returned home, Dennis Jr. arrived with Denise and a male friend. The junior Elke was still drunk, loud and abusive, and after his father attempted to wrestle him into the house from the garage, the two got into a fist fight. At that time, Dennis Sr. was five feet eleven inches tall and weighed between 200 and 225 pounds and his son was five feet nine inches tall and 190 pounds.

The only witness to testify about the fight was Mrs. Elke. She ran inside the home to call the police when she sensed that her husband and son were

about to do battle, but saw no blows being struck. When she returned to the garage, Dennis Jr. was sitting on the garage floor, bleeding from his lip. Upon arrival of the Maple Grove Police, Dennis Jr. retired to his bedroom and no arrests were made.

10. On several occasions during the fall of 1979 and winter of 1980, Sharon Elke told various professional persons who were involved in helping her or her family that Denny (senior) had beaten up Dennis (junior) and that she was afraid of her husband.

11. After the above-described incident between the Elke men, Mrs. Elke sought the services of Ernie Larson, a counselor who was formerly a highly-respected (by Mrs. Elke) Catholic priest at the Elkes' church. Larson referred her to counselors at Mercy Hospital in Coon Rapids and, on the same day (December 5, 1979) Sharon Elke was admitted to the hospital by Psychiatrist Frederic Hall. She was hospitalized, and treated for emotional problems, at Mercy until December 26, 1979.

Mrs. Elke had herself committed to the hospital in an effort to "find herself" and be able to do things for herself and on her own behalf instead of "playing roles" to suit other people. As of December of 1979, she was no longer able to cope with having to be a wife to her husband, a mother to her children, a daughter to her mother and a friend to others, all at the same time, without having established her own identity. She was then 34 years old, had been married to Dennis Elke for 17 years, had an eighth grade education and had never worked outside her home.

12. During the winter of 1980, Mrs. Elke returned to John Braun, whom she and her husband had seen for marriage counseling in 1978-79, for further counseling. See Finding 6, above. In addition to counseling on problems related to Denise Elke, Mrs. Elke was treated by Braun for emotional difficulties she was having in connection with her son, Dennis Jr. She missed him a great deal, and was concerned over that and the fact that her husband seemed jealous of the close relationship she had with their son. As an example, Dennis Sr. had held onto the card mailed to the family from Dennis Jr., who was in Air Force basic training, without showing it to his wife for almost one week.

13. After the incidents of family turmoil described in the preceeding Findings, the Elke family situation stabilized over the next two years.

Mrs. Elke desires to work as a day care mother. In order to go into child care as an occupation, she filed the application under review herein in March of 1983. Her day care ambition fits in with her personality, as tested in the Minnesota Inventory Test (formerly called Minnesota Multiphasic Personality Index, or "MMPI") by licensed consulting Psychologist John Richardson in June of 1985. Richardson's examination found Sharon Elke to be a shy, stable person who is oriented toward her home and traditionally "feminine" pursuits such as child-rearing. Richardson believes that Mrs. Elke needs more self-confidence, and that she should take a step in that direction by completing and passing the G.E.D. test, thus qualifying for a high school diploma equivalency. in Richardson's opinion, Sharon Elke is qualified to serve as a family day care provider.

14. In connection with processing of the application, Ms. Stimmler asked for references and/or reports regarding information on treatment and counseling the Elkes had received. Regarding the treatment and counseling,

Ms. Stimmler requested the Elkes to sign release forms for information from Osseo School Counselor Marlys Carpenter, (Braun's) Counseling Clinic, Ernie Larson and Dr. Frederic Hall. The Elkes signed information requests for Carpenter and Braun in 1983, and two other signed release forms, neither of which indicate who is authorized to release information were filed with the County in January 1985.

15. Stimmler based her denial recommendation primarily on the file compiled by Evelyn Rogan in 1979, on her first visit to the Elke home in 1983 (during which Sharon Elke was withdrawn and quiet at first and later "opened up") and on a June 1983 letter from John Braun to the Agency which reads, in part

"I don't know how much progress she has made Since she was last seen here in the Clinic on March 17, 1980. At that time, I could not have recommended her for a license to care for children in her home because she still had too many unresolved conflicts in her own marriage and parenting experience."

The only other documents Stimmeler had from a treatment professional was from Dr. Hall, who was Sharon Elke's admitting and treating physician-psychiatrist at Mercy Hospital in 1979. Hall's letter, which was filed with Stimmeler without the benefit of Mrs. Elke's having signed a release form in order to allow the County to obtain it, reads:

"I had the opportunity of conducting a follow-up psychiatric evaluation on the above-mentioned patient in my office this morning (September 15, 1983). in my opinion, there was no evidence of any psychiatric or chemical dependency problems that would preclude Mrs. Elke from being an excellent day care provider. Since hospitalized at Mercy in 1979, Mrs. Elke's home life has stabilized considerably and she has remained free from any other depressive problems. I am happy to recommend her to you for consideration of licensure."

The above-quoted letter was solicited from Hall directly by Applicant Sharon Elke. Stimmeler gave little weight to Dr. Hall's recommendation because he allegedly had no ongoing relationship with the Elkes and because his short letter fails to detail the psychiatric evaluation that was performed. Stimmeler made no effort to follow-up with Dr. Hall regarding those details.

16. Two licensed day care mothers from Maple Grove, Sharon Johnson and Mary Beckrich-Weidler, have both known the Elkes for several years. Both women utilize Sharon Elke as a day care helper and praise her as a loving, caring person who has excellent rapport with and the ability to physically treat small children in an appropriate fashion.

17. If this application is granted, Mrs. Elke will be the primary day care provider. Mr. Elke, who is employed as a driver for a Twin Cities trucking firm, will be away from the home during most of the hours when care would be provided.

Based on the foregoing Findings of Fact, the Administrative Law Judge hereby makes the following:

#### CONCLUSIONS

1. That the Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. sec. 14.50, 245.801, subd. 1 and Minn. Rule 9545.0020, subp. 10.



2. That the notice of hearing was proper and the Agency and the Minnesota Department of Human Services have fulfilled all relevant substantive and procedural requirements of law or rule.

3. That any of the foregoing Findings of Fact which might properly be termed Legal Conclusions are hereby adopted as such.

4. That the burden of proof is on the Applicants to show by a preponderance of the evidence that the Applicants have met the standards of the family day care licensing statutes and rules.

5. The Applicants have proven that they are able and willing to work with the Agency within the meaning of Minn. Rule (1983) 9545.0350.

6. The Applicants have proven that Mrs. Elke is emotionally able to provide day care to young children within the meaning of Minn. Rule (1983) 9545.0360.

7. The Applicants have not proven that Dennis Elke did not commit an act of child abuse or child battering on his son, Dennis Jr., in November 1979, within the meaning of Minn. Rule (1983) 9545.0340A.

8. The Elkes possess consistent and healthy methods for handling the lifestyle unique to their own family within the meaning of Minn. Rule (1983) 9545.0340.

9. That the Administrative Law Judge and the Commissioner of Human Services are without authority to grant attorney's fees to the Applicants' counsel.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATIONS

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services not deny the application of Dennis and Sharon Elke on the basis of the allegations noted in the Statement of Issues herein.

IT IS FURTHER RECOMMENDED that the Commissioner of Human Services grant a probationary Family Day Care License to Dennis and Sharon Elke, conditioned upon the continuing emotional stability of Mrs. Elke and upon a lack of interpersonal conflict in the household, as monitored by Hennepin County day care licensing personnel, provided that they meet all other family day care licensure requirements.

IT IS FURTHER RECOMMENDED that, should the Commissioner determine that the Elke's application was properly denied as of October,, 1983, that the Applicants be allowed to reapply for family day care licensure at this time.

Dated this 16th day of August, 1985

RICHARD C. LUIS  
Administrative Law Judge



#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the administrative law judge by first class mail.

Reported: Taped (9 Tapes) - No Transcript Prepared

#### MEMORANDUM

All parties agree that because this matter concerns an application made in 1983, the family day care rules in effect at that time are applicable herein (instead of the current rules, which went into effect on April 2, 1985).

Analysis of this case has been complicated because the Administrative Law Judge has had to determine (1) whether the recommendations of the Agency in 1983 were proper, as of 1983, and (2) whether the Elkes should qualify for licensure as FDC parents today.

There is no evidence to indicate that the Elke's family situation had not stabilized by sometime in 1982, and the situation appears to be very stable at this time. Dennis Jr. is out of the Air Force and gainfully employed. Denise, who is back home, is working and planning a marriage. And, the couple has two talented and well-oriented daughters in high school. As of now, and as of 1983, the evidence is overwhelming that the family possesses (or possessed) consistent, healthy methods for handling the lifestyle unique to themselves. See Minn. Rule (1983) 9545.0340.

There is no question, and Mrs. Elke readily admits, that she was emotionally unable to provide day care to young children in 1979 and 1980. The tumultuous situation in the family, which the Judge has described in his Findings, makes that clear. In addition, the Applicant's emotional situation became so fragile that she needed hospitalization. However, the Administrative Law Judge concludes that the emotional problems which Mrs. Elke suffered over five years ago are no longer a barrier to FDC licensure. Dr. Frederic Hall agreed in 1983 (see Finding 15), and John Braun, the other treatment professional relied on by Ms. Stimmeler, did not disagree (he simply had no opinion) at that time. As for the present, John Richardson's recent examination supports a granting of licensure.

The allegation that the Elkes are unable to work cooperatively with the

Agency is based on the belief that they never returned release forms for Dr. Hall and Ernie Larson. The County established, through Ms. Stimmler's testimony, that the Elkes received release of information forms that did not, on their face, identify Hall and Larson. It appears from App's. Exhibits 4 and 5 that the two similar forms the Elkes signed and returned (for Braun and Ms. Carpenter) identified the person from whom the information was requested. Mrs. Elke testified that she would not sign a form where the box indicating from whom the information is requested was blank, and her position is entirely reasonable. The fact that she solicited information from Dr. Hall in 1983 on her own, independent of signing a release, supports the Applicants in this connection because it shows that they were not trying to suppress what Dr. Hall might tell the Agency.

Regarding the first fight between the senior Dennis Elke and his son, the Judge has concluded that the Applicants have not proven that they complied with the rule, -that is that Dennis did not batter and/or abuse Dennis Jr. This is because Mrs. Elke did not see the fight itself (only some of the build-up and the aftermath -- a beaten son), and her testimony fails to detail any hearsay describing the altercation. Mr. Elke, although present throughout the hearing, did not testify. Also, statements made to treatment professionals by Mrs. Elke after the fight indicate that she reported that Dennis Jr. had been beaten up.

However, the facts highlighted in the preceding paragraph do not establish by substantial evidence that Mr. Elke actually did batter or abuse his son. The evidence tends to establish that the father was ultimately forced to swing back at his son in self-defense. Mrs. Elke so testified, and even though she did not see the event and her testimony does not reveal how she came to that knowledge, the Administrative Law Judge tends to believe, from the context of all the evidence, that self-defense is what occurred. The County cites Minn. Stat. 626.556, subd. 2(d)(i), a child protection statute that defines "physical abuse" as "Any physical injury afflicted by a person responsible for the child's care on a child other than by accidental means", and argues that Mr. Elke violated FDC rules by committing an act falling within that statute. The Judge takes notice of the fact that this statute is incorporated into the new definition of abuse, effective April 2, 1985. However, it is the Administrative Law Judge's conclusion that a blow struck by a father in self-defense against a well-built and enraged, drunken 17-year-old son who is virtually as big as he is has not committed "battering" or "abuse" within the meaning of Minn. Rule 9545.034A., due to the fact that the injury occurred as a result of self-defense.

Even if the Commissioner should disagree, and hold that battering or abuse has been proven under the FDC rules, the Administrative Law Judge does not believe that licensure should be denied based on the incident in question because it was remotely removed in time, and, at worst, constitutes a de minimus violation.

R.C L .